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BANIR GANATRA, ALLAN JABCZYNSKI
8 and AMERICOR FUNDING, INC.

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 BUSINESS SOLUTIONS, LLC, a
14 Delaware limited liability company,

15 Plaintiff,

16 v.

17 BANIR GANATRA, an individual,
ALLAN JABCZYNSKI, an
18 individual, AMERICOR FUNDING,
INC., a Delaware corporation,
19 BRANDREP, LLC, a Delaware
limited liability company, and
20 BRANDREP HOLDINGS, LLC, a
Delaware limited liability company,

21 Defendants.
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Case No. 8:18-cv-01426

**FIRST AMENDED ANSWER BY
DEFENDANTS BANIR GANATRA,
AMERICOR FUNDING, INC, AND
ALLAN JABCZYNSKI; AND
DEFENDANT AND
COUNTERCLAIMANT JABCZYNSKI'S
FIRST AMENDED COUNTERCLAIM**

[Complaint filed August 10, 2018]

1 **AMENDED ANSWER**

2
3 Defendants Banir Ganatra (“Ganatra”), Allan Jabczynski
4 (“Jabczynski”) and Americor Funding, Inc. (“Americor”) (collectively, the
5 “Americor Defendants”) hereby amend their answer to the Complaint filed by
6 Plaintiff Business Solutions (“Plaintiff” or “Business Solutions”) by admitting,
7 denying and alleging as follows:

8
9 **COMPLAINT**

10 1. Unnumbered paragraph 1 of the Complaint consists of Plaintiff’s
11 characterization as to the nature of the action, to which no response is required. To
12 the extent a response may be deemed to be required, the Americor Defendants admit
13 only that Plaintiff filed this action. Except to the extent the allegations in
14 unnumbered paragraph 1 of the Complaint are specifically admitted, the Americor
15 Defendants deny each and every remaining allegation contained therein.

16
17 2. In response to unnumbered paragraph 2 of the Complaint, the
18 Americor Defendants admit that BrandRep, LLC and BrandRep Holdings, LLC (the
19 “BrandRep Defendants”) filed a lawsuit against Deirdre Mammano (“Mammano”),
20 Plaintiff and Mr. Chad Ruskey, among others, in the Chancery Court of the State of
21 Delaware. Except to the extent the allegations in unnumbered paragraph 2 of the
22 Complaint are specifically admitted, the Americor Defendants deny each and every
23 remaining allegation contained therein.

24
25 3. In response to unnumbered paragraph 3, the Americor
26 Defendants admit that Jabczynski applied for and was offered a job at Americor
27 while he was employed by Plaintiff. Except to the extent the allegations in
28

1 unnumbered paragraph 3 of the Complaint are specifically admitted, the Americor
2 Defendants deny each and every remaining allegation contained therein.

3
4 4. Unnumbered paragraph 4 of the Complaint consists of Plaintiff's
5 characterization as to the nature of the action, to which no response is required. To
6 the extent a response may be deemed to be required, the Americor Defendants admit
7 that Plaintiff filed this action, and seeks the relief it seeks. Except to the extent the
8 allegations in unnumbered paragraph 4 of the Complaint are specifically admitted,
9 the Americor Defendants deny each and every remaining allegation contained
10 therein.

11
12 5. In response to paragraph 1, the Americor Defendants are without
13 sufficient knowledge or information to form a belief as to the truth of such
14 allegations, and on that basis deny each and every allegation contained therein.

15
16 6. In response to paragraph 2, the Americor Defendants deny all of
17 the allegations contained therein.

18
19 7. In response to paragraph 3, the Americor Defendants admit all of
20 the allegations contained therein.

21
22 8. In response to paragraph 4, the Americor Defendants deny all
23 allegations contained therein.

24
25 9. In response to paragraph 5, the Americor Defendants admit that
26 BrandRep Holdings, LLC is a Delaware limited liability company. Except to the
27 extent the allegations in paragraph 5 of the Complaint are specifically admitted, the
28 Americor Defendants deny each and every remaining allegation contained therein.

1 10. In response to paragraph 6, the Americor Defendants admit all of
2 the allegations contained therein.

3
4 11. In response to paragraph 7, the Americor Defendants respond
5 that Plaintiff's allegations are legal conclusions for which no response is required.
6 To the extent a response is required, the Americor Defendants deny each and every
7 allegation contained in paragraph 7.

8
9 12. In response to paragraph 8, the Americor Defendants respond
10 that Plaintiff's allegations are legal conclusions for which no response is required.
11 To the extent a response is required, the Americor Defendants admit only that venue
12 is proper in this Court. Except to the extent specifically admitted, the Americor
13 Defendants deny the remaining allegations of paragraph 8.

14
15 13. In response to paragraph 9, the Americor Defendants respond
16 that Plaintiff's allegations are legal conclusions for which no response is required.
17 To the extent a response is required, the Americor Defendants admit that this Court
18 has personal jurisdiction over Defendants, that Ganatra and Jabczynski reside within
19 this Judicial District and that Americor and the BrandRep Defendants have a
20 principal place of business within this Judicial District. Except to the extent
21 specifically admitted, the Americor Defendants deny the remaining allegations of
22 paragraph 9.

23
24 14. In response to paragraph 10, the Americor Defendants are
25 without sufficient knowledge or information to form a belief as to the truth of such
26 allegations, and on that basis deny each and every allegation contained therein.

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28

1 15. In response to paragraph 11, the Americor Defendants are
2 without sufficient knowledge or information to form a belief as to the truth of such
3 allegations, and on that basis deny each and every allegation contained therein.
4

5 16. In response to paragraph 12, the Americor Defendants are
6 without sufficient knowledge or information to form a belief as to the truth of such
7 allegations, and on that basis deny each and every allegation contained therein.
8

9 17. In response to paragraph 13, the Americor Defendants are
10 without sufficient knowledge or information to form a belief as to the truth of such
11 allegations, and on that basis deny each and every allegation contained therein.
12

13 18. In response to paragraph 14, the Americor Defendants are
14 without sufficient knowledge or information to form a belief as to the truth of such
15 allegations, and on that basis deny each and every allegation contained therein.
16

17 19. In response to paragraph 15, the Americor Defendants are
18 without sufficient knowledge or information to form a belief as to the truth of such
19 allegations, and on that basis deny each and every allegation contained therein.
20

21 20. In response to paragraph 16, Jabczynski admits that he signed an
22 Acknowledgment that Plaintiff provided him with an Employee Handbook. Except
23 to the extent the allegations in paragraph 16 of the Complaint are specifically
24 admitted by Jabczynski, he denies each and every remaining allegation contained
25 therein. Americor and Ganatra are without sufficient knowledge or information to
26 form a belief as to the truth of the allegations in paragraph 16, and on that basis deny
27 each and every allegation contained therein.
28

1 21. In response to paragraph 17, the Americor Defendants are
2 without sufficient knowledge or information to form a belief as to the truth of such
3 allegations, and on that basis deny each and every allegation contained therein.
4

5 22. In response to paragraph 18, the Americor Defendants are
6 without sufficient knowledge or information to form a belief as to the truth of such
7 allegations, and on that basis deny each and every allegation contained therein.
8

9 23. In response to paragraph 19, the Americor Defendants are
10 without sufficient knowledge or information to form a belief as to the truth of such
11 allegations, and on that basis deny each and every allegation contained therein.
12

13 24. In response to paragraph 20, Jabczynski admits that he was
14 employed by Plaintiff dba Ad.IQ, from in or around November 2017 until July 5,
15 2018, in an inside sales position, responsible for business development and online
16 marketing strategy consulting. Jabczynski further admits that he signed his offer
17 letter from Plaintiff upon accepting employment. Jabczynski is without sufficient
18 knowledge or information to form a belief as to the truth of the remaining
19 allegations in paragraph 20 and, therefore, except to the extent the allegations in
20 paragraph 20 of the Complaint are specifically admitted by Jabczynski, he denies
21 each and every remaining allegation contained therein. Americor and Ganatra are
22 without sufficient knowledge or information to form a belief as to the truth of the
23 allegations in paragraph 20, and on that basis deny each and every allegation
24 contained therein.
25

26 25. In response to paragraph 21, Jabczynski admits that he had
27 access to a customer relationship management software program at Business
28 Solutions. Except to the extent the allegations in paragraph 21 of the Complaint are

1 specifically admitted by Jabczynski, he denies each and every remaining allegation
2 contained therein. Americor and Ganatra are without sufficient knowledge or
3 information to form a belief as to the truth of the allegations in paragraph 21, and on
4 that basis deny each and every allegation contained therein.

5
6 26. In response to paragraph 22, the Americor Defendants admit that
7 Jabczynski applied for employment with Americor. Except to the extent specifically
8 admitted, the Americor Defendants deny the remaining allegations of paragraph 22.

9
10 27. In response to paragraph 23, Jabczynski admits that, while
11 employed by Plaintiff, he accessed Business Solutions customer relationship
12 management software program, and properly kept records of the commissions he
13 had earned. Except to the extent the allegations in paragraph 23 of the Complaint
14 are specifically admitted by Jabczynski, he denies each and every remaining
15 allegation contained therein. Americor and Ganatra are without sufficient
16 knowledge or information to form a belief as to the truth of the allegations in
17 paragraph 23, and on that basis deny each and every allegation contained therein.

18
19 28. In response to paragraph 24, Jabczynski denies all of the
20 allegations contained therein. Moreover, Ganatra and Americor are without
21 sufficient knowledge or information to form a belief as to the truth of such
22 allegations, and on that basis deny each and every allegation contained therein.

23
24 29. In response to paragraph 25, Jabczynski denies all of the
25 allegations contained therein. Moreover, Ganatra and Americor are without
26 sufficient knowledge or information to form a belief as to the truth of such
27 allegations, and on that basis deny each and every allegation contained therein.

1 36. In response to paragraph 32, the Americor Defendants state that
2 this paragraph consists solely of legal propositions and conclusions for which no
3 response is required. To the extent a response is required, the Americor Defendants
4 deny each and every allegation of paragraph 32.

5
6 37. In response to paragraph 33, the Americor Defendants state that
7 this paragraph consists solely of legal propositions and conclusions for which no
8 response is required. To the extent a response is required, the Americor Defendants
9 deny each and every allegation of paragraph 33.

10
11 38. Paragraphs 34-39 are contained solely within Count II of the
12 Complaint, which was dismissed with prejudice and, therefore, no response is
13 required. To the extent a response is required, the Americor Defendants deny each
14 and every allegation of paragraphs 34-39.

15
16 **COUNT III**

17 **Misappropriation of Trade Secret pursuant to California Civil Code § 3426**
18 **(All Defendants)**

19 39. In response to paragraph 40, the Americor Defendants repeat
20 each and every of their respective allegations, admissions and denials contained in
21 paragraphs 1 through 37, and incorporate same by reference as though fully set forth
22 herein.

23
24 40. In response to paragraph 41, the Americor Defendants deny each
25 and every allegation contained therein.

26
27 41. In response to paragraph 42, the Americor Defendants state that
28 this paragraph consists solely of legal propositions and conclusions for which no

1 response is required. To the extent a response is required, the Americor Defendants
2 deny each and every allegation of paragraph 42.

3
4 42. In response to paragraph 43, the Americor Defendants deny each
5 and every allegation contained therein.

6
7 43. In response to paragraph 44, the Americor Defendants deny each
8 and every allegation contained therein.

9
10 44. In response to paragraph 45, the Americor Defendants state that
11 this paragraph consists solely of legal propositions and conclusions for which no
12 response is required. To the extent a response is required, the Americor Defendants
13 deny each and every allegation of paragraph 45.

14
15 45. In response to paragraph 46, the Americor Defendants state that
16 this paragraph consists solely of legal propositions and conclusions for which no
17 response is required. To the extent a response is required, the Americor Defendants
18 deny each and every allegation of paragraph 46.

19
20 46. Paragraphs 47-54 are contained solely within Count IV of the
21 Complaint, which was dismissed with prejudice and, therefore, no response is
22 required. To the extent a response is required, the Americor Defendants deny each
23 and every allegation of paragraphs 47-54.

COUNT V

Breach of Written Contract

(Jabczynski)

47. In response to paragraph 55, Jabczynski repeats each and every allegation, admission and denial contained in paragraphs 1 through 46, and incorporates same by reference as though fully set forth herein.

48. In response to paragraph 56, Jabczynski admits that he signed his offer letter from Plaintiff upon accepting employment and that he signed an Acknowledgment that Plaintiff provided him with an Employee Handbook, but specifically denies that they are valid or enforceable. Except to the extent specifically admitted, Jabczynski denies the remaining allegations of paragraph 56.

49. In response to paragraph 57, Jabczynski states that this paragraph consists solely of legal propositions and conclusions for which no response is required. To the extent a response is required, Jabczynski denies each and every allegation of paragraph 57.

50. In response to paragraph 58, Jabczynski states that this paragraph consists solely of legal propositions and conclusions for which no response is required. To the extent a response is required, Jabczynski denies each and every allegation of paragraph 58.

51. In response to paragraph 59, Jabczynski denies each and every allegation of paragraph 59.

52. In response to paragraph 60, Jabczynski states that this paragraph consists solely of legal propositions and conclusions for which no response is

1 required. To the extent a response is required, Jabczynski denies each and every
2 allegation of paragraph 60.

3
4 53. In response to paragraph 61, Jabczynski is without sufficient
5 knowledge or information to form a belief as to the truth of such allegations, and on
6 that basis deny each and every allegation contained therein.

7
8 54. Paragraphs 62-74 are contained solely within Counts VI and VII
9 of the Complaint, which was dismissed with prejudice and, therefore, no response is
10 required. To the extent a response is required, the Americor Defendants deny each
11 and every allegation of paragraphs 62-74.

12
13 **COUNT VIII**

14 **Unfair Competition pursuant to Cal. Bus. & Prof. Code § 17200**

15 **(All Defendants)**

16 55. In response to paragraph 75, the Americor Defendants repeat
17 each and every of their respective allegations, admissions and denials contained in
18 paragraphs 1 through 54, and incorporate same by reference as though fully set forth
19 herein.

20
21 56. In response to paragraph 76, the Americor Defendants state that
22 this paragraph consists solely of legal propositions and conclusions for which no
23 response is required. Moreover, the Americor Defendants note that Plaintiff's
24 eighth cause of action cannot be based on Defendants' alleged misappropriation of
25 Plaintiff's Trade Secrets in violation of 18 U.S.C. §1836 and California Civil Code §
26 3426, as alleged in this allegation, pursuant to the Court's January 7, 2019 Order,
27 and, therefore, no response is required to said allegation in paragraph 76. To the
28

1 extent a response is required, the Americor Defendants deny each and every
2 allegation of paragraph 76.

3
4 57. In response to paragraph 77, the Americor Defendants state that
5 this paragraph consists solely of legal propositions and conclusions for which no
6 response is required. To the extent a response is required, the Americor Defendants
7 deny each and every allegation of paragraph 77.

8
9 58. In response to paragraph 78, the Americor Defendants state that
10 this paragraph consists solely of legal propositions and conclusions for which no
11 response is required. To the extent a response is required, the Americor Defendants
12 deny each and every allegation of paragraph 78.

13
14 59. Paragraphs 79-84 are contained solely within Count IX, which
15 was dismissed with leave to amend, but for which Plaintiff did not file a timely
16 amendment and, therefore, no response is required. Paragraphs 85-88 are contained
17 solely within Count X of the Complaint, which was dismissed with prejudice and,
18 therefore, no response is required. To the extent a response is required, the Americor
19 Defendants deny each and every allegation of paragraphs 79-84 and 85-88.

20
21 **PRAYER FOR RELIEF**

22 60. The Americor Defendants deny that Plaintiff is entitled to any
23 form of relief and, based thereon, deny generally and specifically each and every
24 allegation of Plaintiff's Prayer for Relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

61. The Complaint, and each and every purported cause of action contained therein, fails to state facts sufficient to constitute a cause of action against the Americor Defendants.

SECOND AFFIRMATIVE DEFENSE

(Waiver)

62. The Complaint, and each and every purported cause of action contained therein, is barred, in whole or in part, by the doctrine waiver by reason of the actions, acquiescence and course of conduct of Plaintiff, including, without limitation, Plaintiff's failure to take reasonable actions to ensure privacy protections once its allegedly proprietary information was disclosed publicly.

THIRD AFFIRMATIVE DEFENSE

(Offset)

63. Even if there were a basis for an award of money damages in this action, the Americor Defendants would be entitled to an offset against any such award in the amount of any damages the Americor Defendants have suffered by virtue of Plaintiff's conduct, which, includes but is not limited to Plaintiff's: (1) fraud against Jabczynski (as alleged in the Counterclaim); and (2) conduct resulting in damages to Ganatra, subject to proof.

FOURTH AFFIRMATIVE DEFENSE

(Lack Of Standing)

64. Plaintiff lacks standing to assert any claim under Count VIII of for alleged Unfair Competition (Cal. Bus. & Prof. Code § 17200) because Plaintiff

1 has not suffered an injury in fact and has not lost money or property as a result of
2 any alleged non-trade secret conduct by the Americor Defendants.

3
4 **FIFTH AFFIRMATIVE DEFENSE**

5 **(Void as Against Public Policy)**

6 65. The contract provisions that Plaintiff seeks to enforce against
7 Jabczynski are void as against public policy to the extent that, among other things,
8 they (1) violate Jabczynski's Constitutional rights under the First Amendment, or (2)
9 restrain Jabczynski from cooperating as a witness to Plaintiff's trade secret
10 violations and fraudulent conduct, or (3) violate the litigation privilege. To the
11 extent the contract is voided, all causes of action that depend on that contract also
12 fail.

13
14 **SIXTH AFFIRMATIVE DEFENSE**

15 **(Unclean Hands)**

16 66. The Complaint and each of the causes of action asserted therein
17 are barred by Plaintiff's own unclean hands. Among other things, Plaintiff has
18 engaged in theft, fraud, and other unfair practices to solicit and divert BrandRep's
19 customers and potential customers, including, through the improper copying,
20 disclosure and use of the CRM Software or software based upon, or identical to,
21 BrandRep's CRM Software. Plaintiff also has engaged in fraud with respect to
22 Jabczynski (as alleged in the Counterclaim), and fostered a culture of deceit among
23 its employees.

SEVENTH AFFIRMATIVE DEFENSE

(Non-Commercial Use)

67. Plaintiff's claims are barred, in whole or in part, because the activity complained about constitutes non-commercial use, and, thus, is not actionable.

EIGHTH AFFIRMATIVE DEFENSE

(No Economic Value)

68. Plaintiff's claims are barred, in whole or in part, because the Americor Defendants did not derive any economic value from the information that allegedly was disclosed to it.

NINTH AFFIRMATIVE DEFENSE

(No Entitlement to Damages)

69. Plaintiff is not entitled to recover damages in connection with its claim under California Business & Professions Code § 17200 et seq.

TENTH AFFIRMATIVE DEFENSE

(No Entitlement to Restitution)

70. Plaintiff is not entitled to recover restitution in connection with its claim under California Business & Professions Code § 17200 et seq.

ELEVENTH AFFIRMATIVE DEFENSE

(Conduct Not Unfair, Unlawful, or Fraudulent)

71. Plaintiff's claims under California Business & Professions Code § 17200 et seq. are barred, in whole or in part, because the Americor Defendants' alleged conduct is not unfair, unlawful or fraudulent within the meaning of California Business & Professions Code § 17200 et seq.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 **(No Business Conduct)**

3 72. Plaintiff's claims under California Business & Professions Code
4 § 17200 et seq. are barred, in whole or in part, because the Americor Defendants'
5 alleged conduct does not constitute "business conduct."

6
7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 **(Preemption)**

9 73. Plaintiff's claims under California Business & Professions Code
10 § 17200 et seq. are preempted by California Civil Code § 3426, et seq. to the extent
11 they arise from the same nucleus of facts as the trade secret claims.

12
13 **FOURTEENTH AFFIRMATIVE DEFENSE**

14 **(The Americor Defendants Did Not Cause Injury Or Harm)**

15 74. Plaintiff's claims are barred, in whole or in part, because to the
16 extent Plaintiff suffered any injury, harm or incurred any damages as alleged in the
17 Complaint, which the Americor Defendants deny, any such injury or damage was
18 not caused by the Americor Defendants but, if anything, was caused and brought
19 about by the acts, conduct or omissions of individuals or entities other than the
20 Americor Defendants and, as such, any recovery herein should be precluded or
21 diminished in proportion to the amount of fault attributable to such other individuals
22 or entities.

1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 **(Unavailability of Injunctive Relief)**

3 75. Plaintiff is not entitled to injunctive relief, because any injury to
4 it is not immediate and irreparable, Plaintiff would have an adequate remedy at law,
5 the balance of hardships favors no injunction and the public interest is best served
6 by no injunction.

7
8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 **(Speculative Damages)**

10 76. The Americor Defendants alleges that Plaintiff cannot recover
11 any of the damages alleged in the Complaint to the extent such damages, if any, are
12 too speculative to be recoverable.

13
14 **SEVENTEENTH AFFIRMATIVE DEFENSE**

15 **(No Punitive Damages)**

16 77. To the extent Plaintiff seeks punitive damages, such claim does
17 not meet the requirements for pleading a right to exemplary and punitive damages
18 and, moreover, fails to meet the requirements of California law, violates the
19 Americor Defendants' due process rights protected by the U.S. and California
20 Constitutions, and violates the U.S. Constitution's prohibition against excessive
21 fines.

22
23 **EIGHTEENTH AFFIRMATIVE DEFENSE**

24 **(Independent Development)**

25 78. Plaintiff's claims for misappropriation of trade secrets under
26 Federal and California law are barred as a result of the BrandRep Defendants'
27 independent development of the alleged trade secrets at issue.

1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 **(Public Information)**

3 79. Plaintiff's claims for misappropriation of trade secrets under
4 Federal and California law are barred because Plaintiff's alleged trade secrets are
5 not non-public information.

6
7 **TWENTIETH AFFIRMATIVE DEFENSE**

8 **(Failure to Maintain Secrecy)**

9 80. Plaintiff's claims for misappropriation of trade secrets under
10 Federal and California law are barred because Plaintiff failed to maintain the secrecy
11 of the alleged trade secrets.

12
13 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

14 **(Illegal Contract)**

15 81. Plaintiff's claim for breach of contract is barred because the
16 alleged contract(s) are illegal pursuant to California Civil Code §§ 1608 and 1667
17 in that they are contrary to good morals and impinge the public welfare by operating
18 to forbid Jabczynski from disclosing Plaintiff's wrongful conduct described in the
19 Counterclaim.

20
21 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

22 **(Failure to Mitigate Damages)**

23 82. Plaintiff failed to take reasonable steps to mitigate its alleged
24 damages.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(No Damages)

83. Even in Plaintiff's other allegations are true, Plaintiff did not suffer damages.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Void as Procured by Fraud)

84. Plaintiff's claim for breach of contract is barred because the alleged contract(s) are void as a result of being procured by fraud as alleged in the Counterclaim.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Privilege/Justification)

85. The Americor Defendants' alleged conduct is protected from liability through the operation of various privileges and/or justification:

(a) The litigation privilege protects the Americor Defendants' alleged use of any of Plaintiff's claimed trade secret information in relation to the Delaware Court of Chancery action;

(b) The manager's privilege protects Banir's alleged disclosure of any of Plaintiff's claimed trade secret information to the BrandRep Defendants because of his status of a member of BrandRep's board of directors; and

(c) The Americor Defendants' actions are otherwise justified because exposing Plaintiff's fraud and misappropriation has a greater social value than insuring the stability of its contracts with Jabczynski or of the secrecy of its claimed trade secret information.

1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 **(Additional Affirmative Defenses)**

3 86. The Americor Defendants presently have insufficient knowledge
4 or information on which to form a belief as to whether they may have additional
5 affirmative defenses. The Americor Defendants reserve their right to file an
6 amended answer asserting additional affirmative defenses in the event that discovery
7 indicates that they are appropriate.

8
9 **PRAYER FOR RELIEF ON PLAINTIFF'S COMPLAINT**

10 WHEREFORE, the Americor Defendants pray for judgment as follows:

- 11
12 1. That Plaintiff takes nothing by reason of the Complaint;
- 13
14 2. That the Complaint, and each and every purported claim for
15 relief alleged therein, be dismissed with prejudice;
- 16
17 3. That the Americor Defendants be awarded their reasonable costs
18 incurred herein; and
- 19
20 4. That the Americor Defendants be awarded their reasonable
21 attorneys' fees incurred herein; and

22
23 For such other and further relief as this Court deems just and proper.
24
25
26
27
28

1 of the events or omissions giving rise to Jabczynski's claims occurred in this
2 District.

3
4 **PARTIES**

5
6 4. Counter-claimant Jabczynski is an individual residing in Garden
7 Grove, California.

8
9 5. Counter-defendant Business Solutions is a limited liability
10 company allegedly organized under the laws of the state of Delaware, with its
11 principal place of business allegedly located in Costa Mesa, California.

12
13 **GENERAL ALLEGATIONS**

14
15 6. In or around the first week of November 2017, Jabczynski
16 applied for several jobs that he found on Indeed.com. The job posting by Business
17 Solutions did not state the business' name. However, within a day or two of
18 applying, Jabczynski was contacted telephonically regarding his application by
19 Jeffrey Barela, the sales training manager of Business Solutions. Mr. Barela was
20 initially very illusive on the phone, he asked Jabczynski some basic questions,
21 whether he enjoyed talking to people, how his interpersonal skills were, and told
22 Jabczynski that he was hiring for a company named Ad.IQ. At the end of that phone
23 call, Jabczynski was asked to come in to interview in person.

24
25 7. On November 7, 2017, Jabczynski met in-person with Mr. Barela
26 and Mike Nordin, the sales department manager of Business Solutions, at Business
27 Solutions' Costa Mesa office. During this second, in-person interview, Jabczynski
28 was provided more details regarding the proposed job, including that he would hold

1 an inside sales position and would be selling search engine optimization and related
2 internet marketing products to small and mid-sized businesses. Prior to leaving,
3 Jabczynski was told that he would receive an offer letter and other paperwork that
4 same evening.

5
6 8. And, indeed, on the evening of November 7, 2017, Jabczynski
7 received an offer of employment from Ad.IQ (“Offer Letter”), which he accepted.
8 The Offer Letter was disclosed prior to any employment relationship and without
9 any confidentiality agreement, and it freely disclosed the commission rate and
10 compensation that was being offered to Jabczynski.

11
12 9. On November 8, 2017, Jabczynski began work for Business
13 Solutions. It was only then that Jabczynski was informed that the true corporate
14 name of Ad.IQ was Business Solutions, LLC, when he was provided with a Notice
15 to Employee of the true legal name and address of his employer along with other
16 paperwork, as required by California Labor Code Section 2810.5. During his
17 employment, Jabczynski worked exclusively from Business Solutions’ Costa Mesa
18 address.

19
20 10. Jabczynski’s first five days of employment consisted of training,
21 under Mr. Barela. As part of this training, Mr. Barela instructed Jabczynski to
22 falsely represent to third parties that Ad.IQ was based out of Las Vegas, Nevada,
23 instead of Costa Mesa, where he was working and where it was actually located.
24 During this training, Mr. Barela also informed Jabczynski of the names of Business
25 Solutions’ competitors, including BrandRep, LLC (“BrandRep”).

26
27 11. In performing his job, Jabczynski utilized a customer
28 relationship management platform. The customer relationship management

1 platform provided Jabczynski with names of companies, from among the millions of
2 small and mid-sized business in North America, that he should contact to offer
3 Business Solutions' services ("Leads").
4

5 12. During the entirety of Jabczynski's employment, Jabczynski did
6 not know that Business Solutions was utilizing an improper, illegal and illicit copy
7 and/or version of a customer relationship management software program ("CRM
8 Software") that rightfully was owned, to the exclusion of all others, by BrandRep.
9 During the entirety of Jabczynski's employment, Jabczynski also did not know that,
10 not only was Business Solutions improperly, illegally and illicitly using a version of
11 BrandRep's CRM Software, but that, he is informed and believes, many of its Leads
12 apparently were obtained through its use of "bots" that were surreptitiously and
13 illegally placed within BrandRep's version of the CRM Software.
14

15 13. After he had been working at Business Solutions for a month or
16 two, in or around December 2017 or January 2018, Jabczynski became aware that
17 some of the veteran sales employees of Business Solutions, including Bibhor "Bob"
18 Upreti and Josh Montelongo, were able to switch between the customer relationship
19 management platform for Ad.IQ and a customer relationship management platform
20 for BeRanked, to which Jabczynski did not have access. Jabczynski knew from his
21 prior job searches, that BeRanked had been in the same industry as Ad.IQ, and upon
22 inquiring as to why they were able to switch back and forth between the two
23 different customer relationship management platforms, Mr. Upreti and Mr.
24 Montelongo informed Jabczynski that Business Solutions changed its dba from
25 BeRanked to Ad.IQ as a result of a lawsuit, but that they had access to look up leads
26 that they had followed-up on when Business Solutions was still operating as
27 BeRanked. Shortly after speaking with Mr. Upreti and Mr. Montelongo, Mr. Nordin
28 instructed Jabczynski not to post such information on social media or otherwise,

1 including a specific directive not to change his employer information on social
2 media profiles.

3
4 14. In February 2018, a man who identified himself as Ron Gomez,
5 but who Jabczynski was later made aware was named Ronald Ruskey, instructed
6 Jabczynski, and the entire sales floor that unnamed “outside forces” were trying to
7 take down Business Solutions, but that they were not at fault and Business Solutions
8 would not be sued.

9
10 15. Thereafter, in February or March 2018, Mr. Nordin instructed
11 Jabczynski, and the entire the sales floor, that each time he closed a sale to a
12 customer who has previously been contacted by BrandRep, or anytime anyone
13 contacted him regarding BrandRep or mentioned BrandRep, he was to send an email
14 to a specific email address at Ad.IQ with the customer’s information. This in-
15 person speech was followed up with an email blast to the sales team reiterating that
16 anything related to BrandRep needed to be sent to Ms. Deirdre Mammano, the Chief
17 Executive Officer of Business Solutions. Jabczynski was never told to send such an
18 email for any other customers or competitors and was never told why such an email
19 needed to be sent.

20
21 16. Finally, in May or June 2018, Mr. Nordin and Ms. Mammano
22 instructed Jabczynski, and the entire sales floor, to conceal the fact that Business
23 Solutions dba Ad.IQ was in the business of selling search engine optimization, and
24 instead to lie to third parties by saying that Ad.IQ was solely in the business of
25 “Social Media Marketing.” It was around this time that Mr. Jabczynski began
26 seeking employment elsewhere.

1 20. During Jabczynski's interview process, which occurred both
2 telephonically and in-person in the first week of November 2017, and in the Offer
3 Letter, Business Solutions freely disclosed, without any confidentiality agreement,
4 various details regarding the position Jabczynski was being offered and the job he
5 would be asked to perform should he accept it, including, without limitation, the
6 position he would hold, the type of work Business Solutions was engaged in, and the
7 amount of his proposed compensation and commission rate. However, Business
8 Solutions intentionally failed to disclose the below material adverse facts, among
9 other things, which were at that time known only to Business Solutions:

10
11 a) that Business Solutions was improperly and illegally
12 utilizing a copy and/or version of BrandRep's CRM Software and/or Data to run its
13 business;

14
15 b) that Business Solutions was improperly and illegally
16 diverting customers from BrandRep through the use of "bots" placed within
17 BrandRep's version of its CRM Software;

18
19 c) that Business Solutions wanted him to lie to customers by
20 saying that Business Solutions was based in Las Vegas, Nevada when, in fact, it was
21 based out of Costa Mesa where he worked;

22
23 d) that Business Solutions wanted him to conceal the fact that
24 Business Solutions changed its dba from BeRanked to Ad.IQ, and to not post such
25 information on social media or otherwise, including the specific directive not to
26 change his employer information on social media profiles;

1 e) that Business Solutions wanted him to conceal the fact that
2 Business Solutions dba Ad.IQ was in the business of selling search engine
3 optimization but, rather, to lie to third parties by saying that Ad.IQ was in the
4 business of “Social Media Marketing”; and

5
6 f) that Business Solutions had a culture of deceit.

7
8 21. Jabczynski did not know any of the facts set forth above at the
9 time he executed the Alleged Agreements, and he could not have otherwise
10 discovered them.

11
12 22. Business Solutions intended to deceive Jabczynski by failing to
13 disclose and concealing the facts set forth above.

14
15 23. If Business Solutions had disclosed the facts set forth above,
16 Jabczynski would not have executed the Alleged Agreements and thereby
17 purportedly obligated himself to conceal said fraudulent business practices and
18 refrain from exposing said fraudulent business practices to the public, the Delaware
19 Court of Chancery or in any other litigation.

20
21 24. Jabczynski has suffered economic damages as a result of
22 Business Solutions’ fraud, in an amount to be proven at trial. Jabczynski has also
23 suffered emotional distress because he reasonably relied on Business Solutions’
24 failure to disclose the true nature of its business and its deceitful practices, and was
25 instead improperly induced into working for a dishonest company and then sued for
26 exposing Business Solutions’ fraudulent business practices, as alleged above.
27 Further, the Alleged Agreements should be rescinded due to Business Solutions’
28 fraudulent conduct.

1 25. Business Solutions' concealment was a substantial factor in
2 causing Jabczynski's damages. Jabczynski has suffered damages as a result of
3 Business Solutions' conduct.

4
5 26. Business Solutions conduct was intentional and undertaken with
6 malice, fraud and oppression. As a result, Jabczynski is entitled to an award of
7 exemplary and punitive damages according to proof at trial.

8
9 **SECOND CAUSE OF ACTION**
10 **(Declaratory Relief—28 U.S.C. Section 2201)**
11

12 27. Jabczynski incorporates by this reference the allegations
13 contained in paragraphs 1 through 26, inclusive, as though set forth in full.

14
15 28. An actual controversy has arisen and now exists between
16 Jabczynski, on the one hand, and Business Solutions, on the other hand, concerning
17 their respective rights and duties relating to the Alleged Agreements. Jabczynski, by
18 way of this Counterclaim, unilaterally rescinds those Alleged Agreements as having
19 been procured by fraud, illegal and contrary to public policy.

20
21 29. Business Solutions denies that the Alleged Agreements were
22 procured through fraud, are illegal or are contrary to public policy, and, thus, that
23 they are properly rescinded by Jabczynski.

24
25 30. The Alleged Agreements were procured by fraud as alleged in
26 detail above. Moreover, the Alleged Agreements are illegal pursuant to California
27 Civil Code Sections 1608 and 1667 in that by operating to forbid Jabczynski from
28 disclosing Business Solutions' fraudulent business practices they are contrary to

1 good morals and impinge the public welfare. Business Solutions' attempt to use the
2 Alleged Agreements' to silence a witness to Business Solutions' improper and
3 fraudulent conduct violates Jabczynski's First Amendment rights and thus is also
4 contrary to public policy.
5

6 31. A determination of the enforceability of the alleged agreements
7 is necessary and proper at this time to avoid further prejudice to Jabczynski.
8

9 32. Jabczynski desires a judicial determination as to the
10 enforceability of the Alleged Agreements against him, and specifically requests that
11 this Court declare the Alleged Agreements are rescinded and void ab initio.
12

13 **PRAYER FOR RELIEF**
14

15 WHEREFORE, Counter-claimant Jabczynski prays that judgment be
16 entered in this action against Counter-defendant Business Solutions as follows:
17

18 (1) for special and general damages according to proof;
19

20 (2) for compensatory damages against Counter-defendant Business
21 Solutions to be proven at trial;
22

23 (3) for punitive damages;
24

25 (4) for a declaration that the various agreements Counter-defendant
26 Business Solutions alleges Counter-plaintiff Jabczynski and it entered into in the
27 Complaint (the Alleged Agreements) are void ab initio as a result of Counter-
28

1 defendant Business Solutions' fraud, as well as because they are illegal and contrary
2 to public policy;

3
4 (5) for enforcement of Jabczynski's rescission of the Alleged
5 Agreements and his consequential damages related thereto;

6
7 (6) for reimbursement of all expenses and costs of suit, including
8 reasonable attorneys' fees and costs, court costs, and prejudgment interest, against
9 Counter-defendant Business Solutions; and

10
11 (7) for all other relief this Court deems to be fair, just, reasonable
12 and appropriate.

13
14 Dated: March 11, 2019

15 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

16
17 By s/ James M. Burgess
18 JAMES M. BURGESS

19 Attorneys for Defendants
20 BANIR GANATRA, ALLAN JABCZYNSKI
21 and AMERICOR FUNDING, INC. and
22 Counter-Claimant ALLAN JABCZYNSKI
23
24
25
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27
28

DEMAND FOR JURY TRIAL

Counterplaintiff Jabczynski demands a jury trial on all issues so triable.

Dated: March 11, 2019

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By s/ James M. Burgess
JAMES M. BURGESS

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